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OFFICE OF PETITIONS

In re Application of :
Nylen et al. : DECISION ON PETITION
Application No. 10/605,256 :
Filed: September 18, 2003 :
Atty Docket No. 07589.0053. :
NPUS01 :

This is a decision on the PETITION TO WITHDRAW HOLDING OF
ABANDONMENT UNDER 37 CFR 1.181(a) filed September 19, 2007.
This also responds to the PETITION FOR REVIVAL OF AN APPLICATION
FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) filed
October 5, 2007.

The petition under § 1.181 is DISMISSED.

The petition under § 1.137(b) is GRANTED.

The above-identified application became abandoned for failure to
file a timely and proper reply to the non-final Office action
mailed May 19, 2005. This Office action set a shortened
statutory period for reply of three (3) months, with extensions
of time obtainable under § 1.136(a). No reply considered filed
and no extension of time considered obtained, the application
became abandoned effective August 20, 2005. A courtesy Notice
of Abandonment was mailed on February 28, 2006.

A status letter was filed on July 19, 2006, mentioning a previously filed petition to revive. However, no such petition to revive is of record. More than a year later, applicants filed the instant petition to withdraw the holding of abandonment. Applicants assert that a proper response to the Office letter was received by the USPTO on December 27, 2005 and that the response was timely mailed on Monday, November 21, 2005. In support thereof, applicants submit a copy of the transmittal form, with the certificate of mailing statement and the petition of extension of time filed therewith. Applicants note that all of these items are present in PAIR.

It is noted that the response, including an extension of time, is present in the application with a date of receipt of December 27, 2005. Further, a review of the transmittal identifying all of the items being filed, including the extension of time, had a certificate of mailing signed and dated November 21, 2005. However, the paper was not received in the Office until December 27, 2005. Moreover, the certificate of mailing was signed and dated by a "Daniel Hernandez." Yet, the petition does not include a statement from Daniel Hernandez attesting on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing, transmission or submission, as required by 37 CFR 1.8(b)(3). There needs to be a showing that Mr. Hernandez had a reasonable basis to expect that the correspondence would be mailed or transmitted on or before November 21, 2005.

Under the circumstances withdrawal of the holding of abandonment based on 37 CFR 1.8(b) is not warranted.

Petitioner has met the requirements for revival of the application under 37 CFR 1.137(b). The petition includes the required reply in the form of an amendment, payment of the petition fee and the required statement of unintentional delay. Further, the facts and circumstances set forth on the petitions and the fact of the status inquiry filed July 19, 2006, support a conclusion that the entire delay was unintentional within the meaning of 37 CFR 1.137(b).

Technology Center AU 3742 has been advised of this decision. The application file is forwarded to the Technology Center for consideration by the examiner of the amendment submitted on petition filed October 5, 2007.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is fluid and cursive, with the first name "Nancy" written in a larger, more prominent script than the last name "Johnson".

Nancy Johnson
Senior Petitions Attorney
Office of Petitions